



HERB J. WESSON, JR.
SPEAKER OF THE ASSEMBLY

January 13, 2003

Karen Getman, Chair
Commissioners Sheridan Downey III, Thomas S. Knox and Gordana Swanson
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Commission Meeting, January 17, 2003
Agenda Item # 3 - Adoption of Regulation 18530.2

Dear Chairman Getman and Commissioners:

On behalf of the Assembly Democratic Caucus, I write to oppose the adoption of proposed emergency Regulation 18530.2 by the Commission at its meeting on January 17, 2003.

This regulation, in ignoring the clear and unambiguous language in Government Code Section 85306(b) and (c), places unauthorized and unconstitutional restrictions on the use of campaign funds raised by state candidates prior to the imposition of Proposition 34.

These statutory provisions permit candidates who held campaign funds on the effective date of Proposition 34 "to use those funds to seek elective office without attributing the funds to specific contributors." This language does not limit the unattributed use of these funds to only one future election. This language does not prevent the unattributed use of these funds once they have been commingled with other funds or when they merely sit in a campaign account from which other funds have been spent. Instead, these provisions stand as irrefutable evidence against any thinly supported suggestion that the voters intended to restrict the use of pre-Proposition 34 funds in any manner suggested by this regulation.

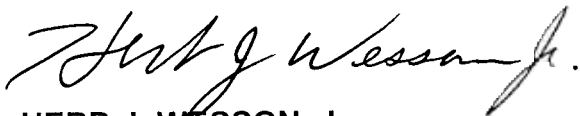
Apart from ignoring the clear statutory intent, the proposed regulation also places unconstitutional expenditure limits on the use of pre-Proposition 34 funds. In 1988, the voters passed Proposition 73, which imposed a new scheme of contribution limits on California elections and banned the future use of contributions raised before the date the proposition became effective. This ban was challenged in federal district court as being an unconstitutional restriction on the use of campaign contributions.

Following the analysis established by the U.S. Supreme Court in Buckley v. Valeo, 424 U.S. 1 (1976), the district court specifically rejected any "level the playing field" justification for the ban and determined that, as a restriction on how candidates spent, rather than received, campaign funds, the ban constituted an unconstitutional expenditure limit on these funds that had nothing to do with preventing corruption or the appearance of corruption. (See Service Employees International Union, AFL-CIO, CLC v. Fair Political Practices Commission, 721 F. Supp. 1172 (1989).) We fail to see how the various restrictions on use of pre-Proposition 34 campaign funds proposed in Regulation 18530.2 differ in any significant way from the ban in Proposition 73.

Any regulation adopted by the FPPC on Section 85306(b) and (c) should be uncomplicated and just follow the statute. The regulation should simply say that pre-Proposition 34 funds may be transferred, unattributed, for use in any future state election so long as the candidate uses an appropriate and consistent accounting method to ensure that the amount of funds so transferred has in fact been held by the candidate since the date Proposition 34 applied to those funds (January 1, 2001 or November 6, 2002, as appropriate).

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, reading "Herb J. Wesson, Jr." with a stylized, cursive script.

HERB J. WESSON, Jr.

Speaker of the California State Assembly